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In re Application of :
ENDERLEIN *et al* :
U.S. Application No.: 10/501,595 :
PCT No.: PCT/DE03/00067 :
Int. Filing Date: 07 January 2003 :
Priority Date: 11 January 2002 :
Attorney Docket No.: 112300-1885 :
For: METHOD FOR ANONYMOUS :
IDENTIFICATION OF THE PROFILES :
OF SUBSCRIBERS IN A :
COMMUNICATION SYSTEM AND :
CORRESPONDING MODULE :

DECISION

UNDER

37 CFR 1.10(d)

This decision is in response to the petition under 37 CFR 1.10(c). No fee is required.

BACKGROUND

Applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 using Express Mail. The United States Designated/Elected Office (DO/EO/US) listed the date of receipt of these documents as 14 July 2004.

On 01 October 2004, applicants filed the instant petition which was accompanied by *inter alia*, a copy of the Daily Express Mail Processing Log for 12 July 2004 and a copy of the USPS Track/Confirm records for Express Mail label No. EV351200551US.

DISCUSSION

A review of the above-captioned application reveals that the Addressee Copy of Express Mail label No. EV351200551US is located in the file and the "Date In" box on the receipt indicates "7 14 04." The label is also stamped "USPTO MAIL CENTER JUL 14 2004 EXPRESS MAIL DATE IN." Accordingly, it was appropriate for the USPTO to give this application a filing date of 14 July 2004.

Applicants claim that the above-identified application should be accorded a filing date of 12 July 2004 because the USPS incorrectly entered the wrong "date-in" on the Express Mail label. Any correspondence received by the United States Patent and Trademark Office delivered by "Express Mail" will be considered filed in the Office on the date of deposit with the USPS. 37 CFR 1.10(a). Also, 37 CFR 1.10(d) allows that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the Express Mail mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the Express Mail mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by Express Mail;

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the Express Mail Post Office to Addressee service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The instant petition is considered to be filed promptly. A review of the above-identified international application verifies that the Express Mail mailing label number EV351200551US is listed on the transmittal letter (Form PTO-1390). Items (1) and (2) of 37 CFR 1.10(d) are satisfied.

Concerning item (3), applicants submitted a copy of the USPS Track/Confirm record for Express Mail No. EV351200551US which shows that the item was accepted by the USPS on "July 12, 2004, 7:33 pm, Chicago, IL 60607." The evidence from the USPS is sufficient to satisfy item (3). Further, the "Certification of Express Mail Under 37 CFR 1.10" located in the file indicates a date of mailing of 12 July 2004. Hence, the date listed by USPS personnel on the "Date In" box of the Express Mail Label is incorrect. USPS records clearly show that the documents were deposited with the USPS on 12 July 2004 not 14 July 2004.

CONCLUSION

For the reasons listed above, applicants' petition to correct the date of receipt of

national stage papers pursuant to 37 CFR 1.10(d) is **GRANTED**.

It is noted that the international filing date and priority date listed on the transmittal letter (Form PTO-1390) filed with the original papers and the transmittal letter filed with the current petition are incorrect. But a review of the declaration shows that the correct international filing date and priority date are recorded. This declaration is in compliance with 37 CFR 1.497(a) and (b).

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 07 January 2003, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of 12 July 2004.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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